MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Telephonic Meeting Held at 800 West Washington Street Phoenix, Arizona 85007 Thursday, March 18, 2021 - 1:00 p.m.

Present: Dale L. Schultz

Chairman (Telephonic)

Joseph M. Hennelly, Jr.

Vice Chair (Telephonic) Commissioner (Telephonic)

Scott P. LeMarr Steven J. Krenzel

Commissioner (Telephonic)

James Ashley

Director (Telephonic)

Gaetano Testini

Chief Legal Counsel (Telephonic)

Jason M. Porter

Deputy Director (Telephonic)

Trevor Laky

Legislative Affairs Chief/Public Information Officer (Telephonic)

Renee Pastor Jessie Atencio Self Insurance (Telephonic) ADOSH Director (Telephonic)

Miguel Castillo Ron Mills

ADOSH Compliance (Telephonic) ADOSH Compliance (Telephonic)

Karen Schomburg

ADOSH Compliance Supervisor (Telephonic)

Anna Maria Stonerock

ADOSH Admin (Telephonic)

Kara Dimas

Commission Secretary (Telephonic)

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance on the telephone, confirmed by roll call were Digger Oster and Thomas Partin (City of Surprise); Carolyn Horton, Uyen Nguyen and Nancy Board (Costco); Teresa Murphy, Glen Smith and John Bissot (Prescott Motors, Inc.); Victoria Bostwick (next of kin); Joyce Snyder (Warehouse Equipment Solutions Tucson LLC); Joe Ramirez (Catalina Roofing Supply, Inc. dba Catalina Roofing); and Savannah Scharnhorst (Snell & Wilmer).

Approval of Minutes of March 4, 2021 Regular Meeting Minutes.

Commissioner Krenzel moved to approve the Minutes of the March 4, 2021 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. The Commission may move into Executive Session under A.R.S. § 38-431.03(A)(2) to discuss records exempt by law from public inspection. Legal action involving a final vote or decision shall not be taken in Executive Session. If such action is required, then it will be taken in General Session.

- a. Approval of Proposed Civil Penalties Against Uninsured Employers.
 - 1. 2C20/21-0028 Sun State Minor Home Improvements LLC \$1,000

b. Approval of Requests for Renewal of Self-Insurance Authority.

- 1. City of Surprise
- 2. Costco Wholesale Corporation
- 3. The Salvation Army U.S.A. Western Territory

Chairman Schultz commended the City of Surprise on their incredible experience modification which demonstrates their commitment to safety and congratulated Costco Wholesale's for their wonderful progress in reducing their experience modification factor.

Chairman Schultz deferred the civil penalty for Sun State Minor Home Improvements until the next meeting.

Commissioner LeMarr moved to approve the amended items on the Consent Agenda and Chairman Schultz, Vice Chair Hennelly, Commissioner Krenzel seconded the motion. Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

Prescott Motors, Inc.

500 Prescott Lakes Parkway

Prescott, AZ 86301

Site Location:

Inspection No:

Inspection Date:

2158 Forest Mountain Rd

Prescott, AZ 86303 B5049 -1504426

11/30/2020

SERIOUS – Citation 1 - Item 1 –

500 Prescott Lakes Parkway, Prescott, AZ 86301: An employee was fatally injured when he fell 16' feet and it was not reported by the employer. 29 CFR 1904.39(a)(1)

Div. Proposal - \$1,000.00

Formula Amt. - \$900.00

Fatality/Accident

Years in Business:

Empl. Covered by Inspection:

10

3

TOTAL PENALTY -\$1,000.00 TOTAL FORMULA AMT. - \$900.00

Mr. Atencio noted that Mr. Mills was available for questions. Mr. Atencio discussed ADOSH's fatality investigation, summarized the citation and proposed penalty, and reviewed the photographs.

Chairman Schultz expressed his feelings about how devastating and tragic this accident was, and it shows the importance of working in pairs. This is a horrible situation.

Chairman Schultz checked if representatives from Prescott Motors would like to comment.

Chairman Schultz checked if Ms. Bostwick would like to comment.

Ms. Bostwick thanked the Commission for the opportunity and emphasized what an amazing company Prescott Motors is, who takes care of their employees. If there is any leniency to give to Prescott Motors, she would appreciate that.

Chairman Schultz appreciated her joining us and sharing her thoughts. The workplace in so many cases is like family and a loss like this is a loss to that family, the extended family. He was sure the folks at Prescott Motors appreciated her husband as a member of their family.

Vice Chair Hennelly moved to approve the citation and proposed penalties as presented and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Warehouse Equipment Solutions Tucson LLC

Fatality/Accident

1963 E Benson Hwy

Years in Business:

Empl. Covered by Inspection:

15

Tucson, AZ 85714

1601 W Commerce Ct

4

Inspection No:

Site Location:

Tucson, AZ 86746 B8139 -1494207

Inspection Date:

09/22/2020

SERIOUS - Citation 1 - Item 1 -

a) 1601 W Commerce Ct, Tucson, AZ 86746: One employee was removing steel storage racks, brand, model and serial numbers unknown, without training. 29 CFR 1926.21(b)(2)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 2 –

a) 1600 W Commerce Ct, Tucson, AZ 86746: The employer did not conduct a demolition survey by a competent person. 29 CFR 1926.850(a)

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

TOTAL PENALTY - \$3,000.00

TOTAL FORMULA AMT. - \$3,000.00

Mr. Atencio discussed ADOSH's fatality investigation, summarized the citation and proposed penalties, and reviewed the photographs.

Chairman Schultz and Mr. Atencio discussed that the description for photographs #7 and #8 included a typo regarding the forklift but the photographs were accurate.

Chairman Schultz checked if anyone on the phone would like to comment.

Ms. Snyder, the owner of the company, did not quite understand what was happing in the inspection. She does have safety inspections for all of their tools before they go into work and reviews the jobsite and gives instruction to the employees before they start work and come back from lunch. She did not know how the wall fell, and she was the one that did the prior inspection but did not realize it was a fake wall.

Chairman Schultz thanked Ms. Snyder for her comments, and directed her to provide any abatement information to Mr. Atencio. The Commission is focused on trying to make sure

workplaces are safe and become safer after accidents like this happen but sometimes events like this are unforeseeable.

Commissioner Krenzel moved to approve the citation and proposed penalties as presented and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Mr. Atencio advised that the next ADOSH Advisory Committee is on March 31, 2021, and based upon his research in this file, the Registrar of Contractors has only three contractors, one of which has a revoked license, who perform this type of work, so he is going to ask the Advisory Committee to think of ways to do outreach and provide more guidance and information that would prevent this from happening in the future.

Chairman Schultz noted it was not the first collapse and it is dangerous work. It's not about the individual event, it's about following through to try to improve safety throughout Arizona in all similar situations.

Complaint

Years in Business:

Empl. Covered by Inspection:

39

4

Catalina Roofing and Supply, Inc. dba Catalina Roofing

2021 W Williams Dr. Phoenix, AZ 85027

Inspection No:

V4364 -1510698

Inspection Date:

01/19/2021 31707 N 40th Way Lot #27

Site Location:

Cave Creek, AZ 85331

REPEAT-SERIOUS - Citation 1 - Item 1a -

a) 31707 N 40th Way, Lot #27, Cave Creek, AZ 85331: Two employees required to use a SAS Safety brand N95 respirator, without receiving respiratory medical evaluations. 29 CFR 1910.134(e)(1)

The Catalina Roofing and Supply, Inc. was previously cited for a violation of this Occupational Safety And Health Standard or its equivalent standard 1910.134(C)(1)(II), which was contained in ADOSH Inspection Number 1410394, Citation Number 2, Item Number 1A and was affirmed as a final order on 11/22/2019, with respect to a workplace located at 30011 W Freda Ln., Lot #322, Buckeye, AZ 85396, and abated on 06/26/2019.

Div. Proposal - \$3,000.00

Formula Amt. - \$1,500.00

REPEAT-SERIOUS - Citation 1 - Item 1b -

a) 31707 N 40th Way, Lot #27, Cave Creek, AZ 85331: An employee was required to wear an SAS Safety brand N95 respirator, without receiving respiratory fit tests. 29 CFR 1910.134(f)(1)

The Catalina Roofing and Supply, Inc. was previously cited for a violation of this Occupational Safety And Health Standard or its equivalent standard 1910.134(F)(2), which was contained in ADOSH Inspection Number 1410394, Citation Number 2, Item Number 1B and was affirmed as a final order on 11/22/2019, with respect to a workplace located at 30011 W Freda Ln., Lot #322, Buckeye, AZ 85396, and abated

on 06/26/2019.
Div. Proposal - \$0.00
TOTAL PENALTY - \$3,000.00

Formula Amt. - \$1,500.00 TOTAL FORMULA AMT. - \$3,000.00

Mr. Atencio noted that Catalina Roofing had been part of the Roofer's Alliance and there were no fall hazard issues and wanted the Commission to know that a lot of their efforts are coming through. Mr. Atencio discussed ADOSH's investigation, summarized the citations and proposed penalties. Mr. Castillo was also available for questions.

Chairman Schultz checked if anyone on the phone would like to comment.

Commissioner Krenzel moved to approve the citation and proposed penalties as presented and Commissioner LeMarr seconded the motion.

Chairman Schultz appreciated Catalina's participation in the Roofer's Alliance and it's obvious to see the progress they have made from the prior citations which were two years ago. He also appreciated all the PPE that Catalina is providing for their folks and that their program does require a medical evaluation. He pointed out the very quick abatement efforts, two weeks, in which the company was able to obtain the required abatement on these citations which is very responsive. He appreciates all of the efforts of Catalina and asked Mr. Atencio to take that under consideration.

Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Consumer Cellular Incorporated

Complaint

7419 S Roosevelt St

Years in Business:

Empl. Covered by Inspection:

25 338

Tempe, AZ 85282

7419 S Roosevelt St

Tempe, AZ 85282

Inspection No:

Site Location:

R2410 -1511868

Inspection Date:

01/27/2021

SERIOUS – Citation 1 - Item 1 –

a) 7419 S Roosevelt St, Tempe, AZ 85282: Employees were provided with corrosive chemicals such as Virex Plus with no eyewash stations in the workplace. 29 CFR 1910.151(c)

Div. Proposal - \$1,500.00 Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 2a –

a) 7419 S Roosevelt St, Tempe, AZ 85282: Employees were provided with hazardous chemicals such as Virex Plus without a written hazard communication program implemented. 29 CFR 1910.1200(e)(1)

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1 - Item 2b –

a) 7419 S Roosevelt St, Tempe, AZ 85282: Employees were provided with hazardous chemicals such as Virex Plus without receiving training. 29 CFR 1910.1200(h)(1) Div. Proposal - \$0.00 Formula Amt. - \$2,500.00

Mr. Atencio discussed ADOSH's investigation, summarized the citations and proposed penalties, and reviewed the photographs.

Chairman Schultz commented that it was incredibly ironic to the impact that COVID has had on virtually all working environments. For instance this, this is basically an office which probably uses a service for their cleaning, so this employer probably has never before had hazardous chemicals to deal with. Now up pops COVID, and they implement an effective program and that includes the ability to sanitize surfaces and in fact using Virus Plus, which is very effective, but virtually all sanitizers contain either alcohol or other disinfecting chemicals that qualify as potentially hazardous chemicals. Here they are doing their best to comply with COVID-19 CDC regs and OSHA regs and can easily see you would not even think that that you need an eyewash station in a basically clerical area. It is interesting the overall impact of COVID had, the changes it has required and do not believe he had seen anywhere the CDC pronouncement or OSHA issued and you do not see it anywhere in the media, that these disinfectants that now we want you to use, can potentially require you do hazard communications, glove and gown people and provide eyewash stations.

Mr. Atencio noted that was a good point, and he has had multiple conversations with many different organizations, associations and individual employers and ADOSH has been doing as much education as they can to inform employers of 29 CFR1200(e)(1) for hazard communication.

Chairman Schultz commented that it is fascinating the direction this sometimes takes, and would encourage all of the compliance and consultation folks to do what they can to try and educate employers about this additional exposure that is created.

Commissioner LeMarr moved to amend the citation and proposed penalties to include a 25% Good Faith Reduction for a total of \$3,000. Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Chairman Schultz thanked Mr. Atencio for the In-Compliance Report detailing the significant number of inspections that found employers were complying.

Woodpecker Framing, LLC.

Referral

4113 E. Maldonado Dr.

Years in Business:

Empl. Covered by Inspection:

10 4

Phoenix, AZ 85042

R2410 -1493991

Inspection No: Inspection Date:

Site Location:

09/21/2020

10040 E Happy Valley Rd Suite #2015

Scottsdale, AZ 85255

SERIOUS – Citation 1 - Item 1a –

a) 10040 E Happy Valley Rd #2015, Scottsdale, AZ 85255: Three employees were wearing N95 dust masks for required use without a written respiratory protection program in place. 29 CFR 1910.134(c)(1)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS - Citation 1 - Item 1b -

a) 10040 E Happy Valley Rd #2015, Scottsdale, AZ 85255: Three employees were wearing N95 dust masks for required use without receiving respiratory medical evaluations. 29 CFR 1910.134(e)(1)

Div. Proposal - \$0.00

Formula Amt. - \$1,000.00

SERIOUS - Citation 1 - Item 1c -

 a) 10040 E Happy Valley Rd #2015, Scottsdale, AZ 85255: Three employees were wearing N95 dust masks for required use without receiving respiratory fit tests.
 29 CFR 1910.134(f)(1)

Div. Proposal - \$0.00

Formula Amt. - \$1,000.00

SERIOUS - Citation 1 - Item 2 -

a) 10040 E Happy Valley Rd #2015, Scottsdale, AZ 85255: Three employees were walking by an uncovered hole ten feet deep, two feet wide, and six feet long. 29 CFR 1926.501(b)(4)(ii) Div. Proposal - \$1,000.00 Formula Amt. - \$1,000.00

<u>SERIOUS</u> – Citation 1 - Item 3 –

a) 10040 E Happy Valley Rd #2015, Scottsdale, AZ 85255: Three employees were exposed to crystalline silica dust while cutting stucco with an angle grinder with no integrated water system. 29 CFR 1926.1153(c)(1)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 4 –

a) 10040 E Happy Valley Rd #2015, Scottsdale, AZ 85255: Three employees were exposed to a hazardous chemical such as crystalline silica without a written hazard communication program in place. 29 CFR 1910.1200(e)(1)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 5 –

a) 10040 E Happy Valley Rd #2015, Scottsdale, AZ 85255: Three employees were exposed to a hazardous chemical such as crystalline silica without receiving hazard communication training. 29 CFR 1910.1200(h)(1)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

TOTAL PENALTY - \$5,000.00

TOTAL FORMULA AMT. - \$7,000.00

Mr. Atencio noted this was brought back to the Commission but there is a small error with the date of the inspection and when the file started. The date should be Friday, September 18, 2020 and not Monday, September 21, 2020. Mr. Atencio discussed ADOSH's investigation, summarized the citations and proposed penalties. Mr. Atencio also corrected the Gravity Based Penalty for Item 5, it should also be \$2,500.

Chairman Schultz checked if anyone on the phone would like to comment.

Vice Chair Hennelly moved to approve the citation and proposed penalties as presented and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley commented that on March 23 and 24, 2021 the Workers' Compensation Research Institute (WCRI) will hold their virtual conference, and he will be participating in a panel to wrap up the first day on the topic of Responding to and Moving Beyond COVID-19. He will have the opportunity to talk about the good steps taken in Arizona over the course of the last year including everything from the Governor's Workers' Compensation Executive Order to all the actions we have taken here at the agency to ensure that the workers' compensation system continues to run smoothly, is responsive and efficient.

Chairman Schultz congratulated Mr. Ashley, noting it is an excellent organization and proud that he was part of the panel.

Mr. Laky provided an update on HB 2160, which has passed the Senate and Third Read with strong bipartisan support. The legislation is going before the Governor to be signed, mostly likely next week.

Ms. Dimas confirmed Commission meeting dates through May 2021. Commissioner LeMarr noted he would not be available on May 20th.

Public Comment.

ATTEST:

There was no other public comment.

Commissioner LeMarr moved to adjourn and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 2:30 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley, Director

Kara Dimas, Commission Secretary